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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-02-2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

TAX CASE (APPEAL) Nos.18 & 19 OF 2007

The Commissioner of Income Tax,
Coimbatore. .... Appellant in both appeals

-vs-

K.K.S.K.Lealther Processor Pvt.Ltd.,
R.N.Pudur, Bhavani Main Road,
Erode. .... Respondent in both appeals

Appeals filed under Section 260A of the Income Tax Act 1961 against the orders of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 30.06.2006, passed in I.T.A.No.2299/Mds/2004 and I.T.A.No.2210/Mds/2004 respectively.

For appellant : Mr.N.Muralikumaran

J U D G M E N T

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

These appeals are at the instance of the revenue.

2. The questions of law raised in these appeals under Section 260-A of the Income Tax Act relate to the valuation of the closing stock. Apart from that, the Revenue also questioned the genuineness of the payments made to shandy persons, from whom not even letters of confirmation were obtained by the assessee. Consequently, the Revenue alleged that when even the proof of the identity of the parties to whom payments were made was not discharged by the assessee, the order of the Tribunal, conferring the benefit of Rule 6 DD on the assessee, is unsustainable.

3. These appeals relate to the assessment year 2001-2002.

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4. It is seen, that in respect of the assessment year 2001-2002, the assessment was completed, holding that there was undervaluation of the closing stock as well as unexplained money utilised for payment to shandy persons. The assessee challenged the order of assessment before the first appellate authority, who, on appreciation of evidence, found that there was no case for enhancing the value of the closing stock on wet blue and, accordingly, rejected the plea. As regards payment to shandy persons, it was seen that out of 126 parties, 48 persons were confirmed through the letters as regards the payment. The first appellate authority found that the most of the payments said to have been made as per the accounts were in the month of April and only three payments were in the month of May. Considering the nature of the business and the evidence produced as regards the confirmation of letters submitted by the appellant in respect of 37 parties, the Commissioner of Income Tax (Appeals) confirmed the disallowance to the tune of Rs.28,36,000/- as against the assessment of Rs.45,55,290/- as unpaid credit balance. Thus, the CIT (Appeals) confirmed the addition to the extent of Rs.28,36,000/-. Referring to the claim of Section 40 A (3), the first appellate authority held that the shandies were held on Sundays and holidays and payments had to be made on these days too. Considering the fact that the persons who brought the hides and skins after processing did not belong to an organized sector and that interaction was only through agents and cash payments were indispensable in these cases, the first appellate authority applied the decision of this Court in *CIT v. Chrome Leather Company (P) Ltd.*, reported in 235 ITR 708, and held that the identity of the payee was established and the payments were in tune with the nature of the assessees business. In the circumstances, the Commissioner held that the entire payments were made in Rule 6 DD (f), (g), (k) and (l). Thus, applying the law laid down by this Court in 235 ITR 708, the Commissioner granted the relief in favour of the assessee. Aggrieved of the same, the Revenue went on appeal and the assessee filed a cross appeal, in respect of the disallowance.

5. The Tribunal considered the claim of the revenue as regards the deletion of the addition, on account of closing stock. The Tribunal held that the Commissioner had given a factual finding, taking into account the materials, linking the details on the closing stock and there was no violation of Rule 46 A, as the data was emanating from regular books of accounts, produced before the assessing authority. Accordingly, the Tribunal rejected the plea of the revenue on the appeal relating to undervaluation of closing stock of wet blue.

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6. The next question raised by the Revenue before the Tribunal centred on the additions made towards the purchase of raw materials. Referring to the order of the Commissioner (Appeals) on this issue, the Tribunal held that when the purchases were not suspected, mere lack of confirmation of balance by the creditors cannot result in the credit balance, as having been paid through unaccounted money. In the absence of any proof to show that unexplained money has been used for making the payment, the Tribunal remitted this issue for considering the balance of amount of Rs.28,36,600/-, to substantiate the addition in this regard. The Tribunal directed the Assessing Officer to grant sufficient opportunity to the assessee, to explain its case. On the question of deleting the entire addition made under Section 40 A (3), the Tribunal held that the officer had not doubted the genuineness of the payments made. Under the circumstances, taking note of the findings of the Commissioner as regards the necessity of paying the shandies in cash, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals). The Tribunal, however, dismissed the appeal of the revenue and allowed the appeal of the assessee in remitting the matter as regards the payment relating to Rs.28,36,600/-. Aggrieved of this, the revenue is on appeal in respect of the order held against it and the assessee's appeal remitted by the Tribunal.

7. Learned counsel appearing for the revenue submits, that in the absence of any details to justify the deletion on undervaluation, the Tribunal ought to have upheld the order of the assessing authority. He also submits that the Commissioner of Income Tax considered the case only on the basis of additional evidence produced by the assessee that there was a large quantity of wet blue and in the absence of reconciliation, the Tribunal ought not to have considered this issue.

8. We do not find any justification to accept the said plea of the revenue. As a matter of fact, the Tribunal noted that large quantity of sale of wet blue was stated to be out of previous year's closing stock and current year's purchases. Further, verification of the regular accounts could not be considered as additional evidence to be called as violation under Rule 46 A (3). Considering the finding of fact by the Tribunal, we do not find any question of law for interference. On the question of addition made in respect of payment to shandies to be held as violative of Section 40 A (3) read with Rule 6 DD, the assessee has produced necessary grounds for making cash payment, considering the nature of trade carried on by the assessee, the Tribunal noted that these payments were made to small time vendors, who come from surrounding villages to sell the skin and the process of dressing the skin done without the aid of power. The Tribunal also noted from the order of the Commissioner, that considering the fact that the purchases were made from unorganized sector, cash payments were indispensable. In the above

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circumstances, the Tribunal rightly came to the conclusion, giving the relief to the assessee. This Court, in the decision in *Commissioner of Income Tax v. Chrome Leather Co. Pvt.Ltd.*, reported in (1999) 235 ITR 708, held that rule 6 DD provides that an assessee can be exempted from the payment by a crossed cheque or crossed bank draft in the circumstances specified in the rule. The Central Board of Direct Taxes has issued certain guidelines giving certain circumstances, and those circumstances are illustrative and not exhaustive and the underlying idea of the circular is that if the identity of the payee is known, it would be possible for the Income-tax Officer to cross-check, whether the transaction had in fact taken place. Taking note of the fact that under similar circumstances this Court had accepted the plea of the assessee, having regard to the nature of trade, we do not find any justification to take it a reason to interfere.

9. Considering the facts and circumstances in these cases, these appeals are dismissed, *in limine*. No costs. Consequently, the connected M.P.No.1 of 2007 is closed.
Dixit

Sd/
Asst.Registrar

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Sub Asst.Registrar

To
1. The Assistant Registrar,
Income Tax Appellate Tribunal
III Floor, Rajaji Bhavan,
Besant Nagar, Chennai 600 090

2. The Income Tax Appellate Tribunal "D" Bench, Chennai

3. The Commissioner of Income Tax Appeals I, Coimbatore

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4. The Commissioner of Income Tax,
Coimbatore.

5. The Assistant Commissioner of Income Tax Circle I Erode

+ one cc to Mr. N. Muralikumaran, Advocate sr no. 7326

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